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94th Congress }  
2d Session }

SUBCOMMITTEE PRINT

found CDS H502-17 p7359 1976

AMENDMENTS TO OLD OIL ALLOCATION  
PROGRAM AND THE PRESIDENT'S PRO-  
POSAL TO EXEMPT RESIDUAL FUEL OIL

FROM THE

MANDATORY PETROLEUM ALLOCATION  
AND PRICE REGULATIONS

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PREPARED FOR THE USE OF THE  
SUBCOMMITTEE ON ENERGY AND POWER  
AND THE  
COMMITTEE ON INTERSTATE AND  
FOREIGN COMMERCE  
U.S. HOUSE OF REPRESENTATIVES



APRIL 1976

U.S. GOVERNMENT PRINTING OFFICE

69-092 O

WASHINGTON : 1976

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(ex officio)	

FRANK M. POTTER, *Staff Director and Counsel*

The following are lists of people who testified in the Rulemaking proceeding before the Federal Energy Administration on the Old Oil Entitlements Program. Copies of the written statements of each of the listed persons are available for examination in the Committee files together with a summary of the statement.

#### COMMENTS RECEIVED BY THE FEDERAL ENERGY ADMINISTRATION

Asiatic Petroleum Corporation  
New England Petroleum Corporation  
Independent Fuel Terminal Operators Association  
Amerada Hess Corporation  
Exxon Company, U.S.A.  
Texaco Inc.  
A. P. Woodson Co.  
Colonial Fuel Company  
American Petrofina, Incorporated  
United Illuminating  
Caribou Four Corners, Inc.  
Americans for Project Independence, Inc.  
Orange and Rockland Utilities, Inc.  
Farmers Union Central Exchange, Inc.  
United Refining Company  
Central Hudson Gas & Electric Corporation  
Independent Refiners Association of Louisiana  
Town of Goshen  
Tenneco Oil  
Exxon Company, U.S.A.  
Sun Oil Company  
Total Leonard, Inc.  
Tesoro Petroleum Corporation  
Caribou Four Corners, Inc.  
Tauber Oil Company  
Potomac Electric Power Company  
Minnesota Energy Agency  
State of New York, Emergency Fuel Office  
U.S. Oil & Refining Co.  
Amoco Oil Company  
American Petroleum Refiners Association  
Continental Oil Company  
Village of Tuxedo Park  
Supervisors of Westfall Townshi!  
Association for a Better New York  
Honorable Otis R. Bowen, Governor of Indiana  
Honorable William G. Milliken, Governor of Michigan  
Edgington Oil Company  
Asiatic Petroleum Corporation  
Coalition to Save New York  
The Citizens Budget Commission (New York)

#### IV

The Rockland County Association of Supervisors  
Standard Oil Company of California  
Gulf Oil Company - U.S.  
Southern California Edison Company  
Getty Oil Company  
Consumers Power Company  
Independent Terminal Operators Association  
Shell Oil Company  
Crown Central Petroleum Corporation  
Virginia Electric and Power Company  
The Standard Oil Company (SOHIO)  
Ralph Snyder Associates, Inc.  
Union Oil Company of California  
Marathon Oil Company  
Cities Service Company  
Kerr-McGee Corporation  
Mobil Oil Corporation  
Independent Petroleum Association of America  
Government of the Netherlands Antilles

#### ORAL STATEMENTS PRESENTED AT FEA HEARING ON MARCH 2-3, 1976

Honorable Lawton Chiles, Senator of the State of Florida  
Continental Oil Company  
Consolidated Edison Company of New York  
Energy Corporation of Louisiana  
American Oil Company  
Union Oil Company  
Independent Fuel Terminal Operators Association  
Exxon Company, U.S.A.  
Economic Development Administration Commonwealth of Puerto Rico  
New England Power Pool  
Florida Power and Light  
Fuel Merchants Association of New Jersey  
Oil Heat Institute of Long Island, Inc.  
New England Petroleum Corporation  
Commonwealth Oil Refining Company  
Empire State Petroleum Association  
Clark Oil and Refining Corporation  
The Standard Oil Company (OHIO)  
New England Fuel Institute  
National Oil Jobbers Council

United Refining Company  
Members of Congress, 26th District, New York  
Air Transport Association of America  
Boston Edison Company  
Atlantic Richfield Company  
Hawaiian Independent Refinery  
Claiborne Gasoline Company  
Long Island Lighting Company  
Mobile Oil Corporation  
Gulf Oil Corporation  
Attorney General State of Rhode Island



## LATE COMMENTS

Texaco Inc.  
Delta Refining Company  
Wanda Petroleum Company  
Quintana Refinery Co.  
Howell Corporation  
Independent Refiners Association of America  
Vickers Petroleum Corporation  
Asiatic Petroleum Corporation  
Powerine Oil Company  
Hampton Roads Energy Company  
Southern Airways, Inc. (Comments submitted by the  
Law Offices of Ballard and Beasley)  
Iowa Energy Policy Counsel  
Farmland Industries, Inc.  
Texas Independent Producers and Royalty Owners Assoc.  
Liaison Committee of Cooperating Oil and Gas Associations  
South Hampton Company  
Midland Cooperative Inc.  
Kerr-McGee Corporation  
Pacific Gas and Electric Company  
International Trading and Transport, Ltd.  
Honorable Michael S. Dukakis, Governor of Massachusetts  
Coastal States Gas Corporation  
Air Transport Association of America  
Honorable Edward P. Beard  
Navajo Refining Company  
Independent Refiners' Association of California, Inc.  
Phillips Petroleum Company  
Florida Chamber of Commerce  
Town of Tuxedo  
Delta Refining Company  
Borough of Cresskill  
State of Connecticut - Department of Planning and  
Energy Policy  
Florida Public Service Commission  
Exxon Company, U.S.A.  
Mid America Refining Co.  
Edgington Oil Company  
Wisconsin Office of Emergency Energy Assistance  
Long Island Lighting Company

## VII

LONG ISLAND LIGHTING COMPANY  
STATE OF FLORIDA  
PUBLIC SERVICE COMPANY  
MARITIME TRADES DEPARTMENT  
JULIAN C. MCGRATH  
INDEPENDENT TERMINAL OPERATORS ASSOCIATION  
ORANGE AND ROCKLAND UTILITIES, INC.  
NEW ENGLAND PETROLEUM CORPORATION  
SKELLY OIL COMPANY  
VIRGINIA AELEC. AND POWER CO.  
MULTIPLE SENATE ( HONORABLE EDWARD BROOKE  
HONORABLE EDWARD KENNEDY)  
HONORABLE TORBERT H. MACDONALD  
MULTIPLE SENATE ( HONORABLE LAWTON M. CHILES,  
HONORABLE ROBERT L.F. SIKES, HONORABLE JAMES A. HALEY  
HONORABLE PAUL G. ROGERS, HONORABLE DON FUQUA,  
HONORABLE WILLIAM V. CHAPPELL, HONORABLE J. HERBERT BURKE,  
HONORABLE C.W. BILL YOUNG, HONORABLE RICHARD KELLY,  
HONORABLE RICHARD (DICK) STONE, HONORABLE CHARLES E. BENNETT  
HONORABLE DANTE B. FASCELL, HONORABLE CLAUDE D. PEPPER  
HONORABLE SAM M. GIBBONS, HONORABLE WILLIAM LEHMAN  
HONORABLE LOU FREY, HONORABLE LOUIS A. (SKIP) BAFALIS).  
HONORABLE MARGARET M. HECKLER, MEMBER OF CONGRESS  
HONORABLE WALTER E. FAUNTROY, MEMBER OF CONGRESS  
HONORABLE WILLIAM T. MAYO, CHAIRMAN  
HONORABLE VANCE HARTKE  
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HONORABLE WILLIAM LEHMAN, MEMBER OF CONGRESS  
HONORABLE CHARLES THONE, U.S. CONGRESSMAN  
HONORABLE BOB SIKES  
HONORABLE KEITH G. SEBELIUS ( ON BEHALF OF C. RUSSELL LOCKWOOD  
STANDARD OIL COMPANY, INDIANA)

## VIII

HONORABLE L.A. "SKIP" BAFALIS, MEMBER OF CONGRESS  
HONORABLE DICK CLARK, U.S. SENATE  
HONORABLE GERRY E. STUDDS  
HONORABLE EDWARD I. KOCH  
HONORABLE JACOB K. JAVITS  
MULTIPLE SENATE (HONORABLE BILL BROCK  
HONORABLE JOSEPH M.. MONTOYA, HONORABLE PETE V. DOMENICI  
HONORABLE JAMES A. MCCLURE, HONORABLE PAUL LAXALT  
HONORABLE FRANK E. MOSS, HONORABLE J. BENNETT JOHNSTON  
HONORABLE ROBERT TAFT, HONORABLE DANIEL K. INOUE.  
HONORABLE GALE W. MCGEE, HONORABLE BARRY GOLDWATER  
HONORABLE BOB DOLE



The following are lists of people who testified before the Federal Energy Administration on the Exemption of Residual Fuel Oil. Copies of the written statements of each of the listed persons are available for examination in the Committee files together with a summary of the statement.

#### COMMENTS RECEIVED BY THE FEDERAL ENERGY ADMINISTRATION

United Refining Company  
Ralston Purina Company  
Cities Service Company  
Salt River Project Agricultural Improvement  
and Power District (SRP)  
Energy Task Force -- ACE/APPA/NACUBO  
Union Oil Company of California  
Howell Corporation  
Quintana Refinery Co.  
Florida Power Corporation  
USA Petroleum Corporation  
Consolidated Edison Company of New York  
General Motors Corporation  
American Public Power Association  
American Telephone and Telegraph Company  
Kerr-McGee Corporation  
International Trading and Transport, Ltd.  
Clark Oil & Refining Corporation  
Continental Oil Company  
Atlantic Richfield Company  
Standard Oil Company of California  
Air Transport Association of America  
Pennzoil Company  
Tesoro Petroleum Corporation  
American Petroleum Refiners Association  
Getty Oil Company  
U. S. Oil & Refining Co.  
Ashland Petroleum Company  
Independent Refiners' Association of California, Inc.

(IX)

## ORAL STATEMENTS PRESENTED AT MARCH 9, 1976, HEARING

COALITION TO SAVE NEW YORK INCORPORATED  
NEW YORK STATE EMERGENCY FUEL OFFICE  
NEW ENGLAND PETROLEUM CORPORATION  
INDEPENDENT FUEL TERMINAL OPERATORS ASSOCIATION  
NATIONAL OIL JOBBERS COUNCIL  
NEW ENGLAND FUEL INSTITUTE  
FUEL MERCHANTS ASSOCIATION OF NEW JERSEY  
OIL HEAT INSTITUTE OF LONG ISLAND INCORPORATED  
ECOL, LTD.  
SUN OIL COMPANY  
STANDARD OIL COMPANY OF OHIO  
CONTINENTAL OIL COMPANY  
AMOCO OIL COMPANY  
ATLANTIC RICHFIELD COMPANY  
EXXON COMPANY, U.S.A.  
SHELL OIL COMPANY  
TEXACO CORPORATION  
MOBIL OIL CORPORATION  
OIL HEAT INSTITUTE OF WESTCHESTER, INC.

LATE COMMENTS RECEIVED BY THE FEDERAL ENERGY ADMINISTRATION

State of Connecticut - Department of Planning and  
Energy Policy

American Telephone and Telegraph Company

Amerada Hess Corporation

The Standard Oil Company (SOHIO)

Powerine Oil Company

Government of the Netherlands Antilles

Northeast Utilities

Amoco Oil Company

New England Power Service Company

Arizona Public Service Company

American Petrofina, Incorporated

Champlin Petroleum Company

Tenneco Oil

Phillips Petroleum Company

Famariss Oil Corporation

Hawaiian Electric Company, Inc.

Marathon Oil Company

American Paper Institute, Inc.

New England Congressional Caucus -- Statements of

- (1) Congressman Ronald Sarasin and Congressman  
James Cleveland
- (2) Congressman James Jeffords
- (3) Congressmen William Cotter, Christopher Dodd,  
Robert Giaimo, Toby Moffett and Stewart McKinney
- (4) Congressmen Fernand St Germain and  
Edward Beard
- (6) Congressman Norman D'Amours
- (7) Congressmen Edward Boland, Silvio Conte,  
Joseph Early, Robert Drinan, Paul Tsongas,  
Michael Harrington, Tobert Macdonald, Thomas  
O'Neill, Jr., John Moakley, James Burke,  
Margaret Heckler and Gerry Studds

The Commonwealth of Massachusetts - Energy Policy Office

Department of Water and Power the City of Los Angeles

Southern California Edison Company

Honorable Reubin O'D. Askew, Governor of the State  
of Florida



TITLE 10 - ENERGY

CHAPTER II - FEDERAL ENERGY ADMINISTRATION

PART 211 - MANDATORY PETROLEUM ALLOCATION REGULATIONS

PART 212 - MANDATORY PETROLEUM PRICE REGULATIONS

Amendments to Old Oil Allocation Program  
and Further Notice of Proposed Rulemaking

On February 12, 1976, the Federal Energy Administration issued a notice of proposed rulemaking and public hearing (41 FR 7125; February 17, 1976), to amend Title 10, Part 211, of the Code of Federal Regulations with respect to the old oil allocation or entitlements program (hereinafter referred to as the "entitlements program") set forth in 10 CFR 211.67. The principal amendments proposed were to modify the entitlements program with respect to residual fuel oil marketed in the East Coast and to expand the coverage of the program to all domestic crude oil, with differing entitlement weights being assigned to old oil and to new and stripper well oil. Various other amendments were also proposed, the most significant of which clarified the treatment of exchanges of crude oil under the program and provided for a special manner of handling reporting errors for the first ten months of the program.

Comments were invited through March 2, 1976, and over 90 written comments were received. A public hearing was held on March 2 and 3, 1976, and 30 persons presented statements at this hearing. The purpose of this final rule is to



take action on the amendments set forth in FEA's February 12 proposal and to request further comments as to certain of these amendments.

It should be emphasized, however, that FEA is aware that the amendments to the entitlements program adopted today are very complex and will require further review after the effect of their interaction with other FEA regulations is fully understood. In particular, before the end of this year, FEA intends to reassess the operation and effectiveness of the entitlements program.

FEA is also especially concerned as to the impact of the entitlements program, as amended today, upon new, independent refining capacity in this country, the viability of which FEA considers to be in the national interest. It is recognized that the projections upon which the amendments adopted today are based may not necessarily be fully consistent with the needs of refiners operating such new refinery capacity. These projections may also not hold true for changing market conditions in future periods which may necessitate additional adjustments to the entitlements program. Therefore, FEA will monitor closely the effects of this amendment as to new domestic refiners, and is prepared to take any action warranted to adjust the program so that it will not impact adversely on such firms.

I. ENTITLEMENT PROGRAM AMENDMENTS FOR  
EAST COAST RESIDUAL FUEL OIL MARKET

Introduction

FEA proposed amendments to the entitlements program pertaining to the East Coast residual fuel oil market to adjust the program to the peculiarities of this market. The purpose of FEA's proposal was to place marketers dependent on foreign supplies in an acceptable competitive position vis-a-vis domestic refiners.

Imports of residual fuel oil from foreign refiners into the East Coast account for between 60% and 70% of the total consumption of that product in the region. Domestic residual fuel oil production marketed in the East Coast (the most significant domestic marketer being the Amerada Hess Corporation) receives the cost equalizing benefits of the entitlements program, thus resulting in a significant disparity between the feedstock costs for the various foreign refiners and their affiliates and the crude costs of domestic refiners. This situation has been aggravated in recent months by the removal of the \$2 supplemental import fee and the rollback in domestic crude oil prices under the EPCA. In summary, although the entitlements program has generally had the effect of reducing domestic refiners' crude cost disparities and resulting market distortions, it has created competitive imbalances in the East Coast residual fuel oil market. The structure of the East Coast market is discussed at length in FEA's February 12 proposal, and reference

should be made thereto for the agency's rationale for the modifications to the entitlements program in this area.

#### Regulatory Amendments Adopted

In the February 12 proposal, FEA set forth two alternative regulatory procedures for modification of the entitlements program pertaining to the residual fuel oil market on the East Coast. The first alternative would have basically reduced the entitlement value for domestic refiners' residual fuel oil production marketed in PAD District I so that domestic refiners would be placed on a higher crude cost basis, relatively equivalent to that of foreign refiners marketing in that District. The second alternative took the opposite approach and provided for the issuance of entitlements to importers of residual fuel oil refined in a foreign refinery so as to reduce their cost to a level equivalent to the cost of residual fuel produced by domestic refiners.

FEA requested that all persons commenting on these alternatives bear in mind that, concurrent with issuance of the entitlements program proposal, FEA also issued a separate notice of proposed rulemaking to exempt residual fuel oil from allocation and price controls. Thus, comments were requested as to the effect of each of these alternative proposals assuming that such exemption would in fact take place.

FEA received numerous comments on its alternative proposed regulatory amendments. Neither alternative proposed was favored by a clear majority of firms that are actual participants in the East Coast residual fuel oil market. However, the consensus of the comments regarding the first alternative was that FEA's proposed calculations involving the use of imputed selling prices for domestic refiners were unworkable and would not achieve their intended result. As to the second alternative, some firms commenting also expressed concern as to the compatibility of the issuance of entitlements for product imports with FEA's proposal to decontrol residual fuel oil.

Finally, many comments were received with respect to the regional impact of each of the proposals. Numerous comments opposed the second alternative in that it would cause some price increases outside of the East Coast. Comments from interested parties on the East Coast, however, largely opposed the adoption of the first alternative on the grounds that it would cause a price increase for residual fuel oil in that region.

In general, however, the comments received by FEA on its proposal to modify the entitlements program as to the East Coast residual fuel oil market were very detailed and supported FEA's initial conclusions set forth in the proposal as to the need for amendments to the program in this regard. FEA wishes to express its appreciation in particular to the



firms from which it requested detailed information on this matter in advance of the public hearing. These latter submissions were of significant value to the agency in its analysis of this problem. The comments received clearly indicated that a continuing advantage for domestic refiners of the type previously in effect was having a significant adverse financial effect on all firms reliant on refineries not eligible for benefits under the entitlements program. In many cases severe operating losses were being experienced, market shares had suffered severe declines and the incentives for continuing operations by certain of these firms were disappearing.

In light of these comments, FEA has concluded that mitigation of the competitive imbalance which exists in the East Coast residual fuel oil market is definitely necessary. FEA is, however, particularly concerned about the regional impact of each of its proposed alternatives. In this regard, FEA concurs with the comments received that the first proposed alternative would result in energy cost increases on the East Coast, whereas the second alternative would lower East Coast energy costs and increase those for other regions of the United States. Because of the adverse impact both alternatives have upon different areas of the country, neither alternative has been adopted. Instead, the amendment adopted hereby combines elements of the two alternatives in a manner which is expected to remove the current market



distortions but which assures virtually no changes in the regional impact of the amended entitlements program compared with the program prior to this amendment.

Under the amendment adopted, issuances of entitlements will be reduced by 50% as to a domestic refiner's total production (in excess of the first 5,000 barrels per day) of residual fuel oil for sale in the Bureau of Mines East Coast Refining District. In addition, each importer of residual fuel oil (i.e., the importer of record under the import program) would receive 30% of the entitlement value of a barrel of crude oil included in a refiner's crude oil runs for each barrel of residual fuel oil imported by it for a particular month into the BOM East Coast Refining District. Imports from the U.S. Virgin Islands would not be eligible for these entitlement issuances.

FEA adopted this amendment, which has certain features of each of the proposed alternatives, after full consideration of all the comments. FEA concluded that a more substantial entitlement deduction as to domestic residual fuel oil production would likely result in price increases for this product on the East Coast and provide incentives for domestic refiners to reduce production of residual fuel oil. Therefore, FEA has provided for an entitlement value reduction of 50% (instead of the maximum 75% reduction proposed as a possible option). FEA, however, agrees with the comments

on proposed Alternative No. 1 which suggested that the use of imputed selling prices for domestic refiners was unworkable and would not achieve its intended result. Thus, it has not adopted this complicated method of reducing entitlement benefits and instead has provided for a single flat entitlement value reduction.

FEA has further decided to exempt the first 5,000 B/D of residual fuel oil production for all domestic refiners instead of just exempting firms with production levels under 5,000 B/D. FEA believes that an exemption of the first 5,000 B/D of residual fuel oil production for domestic refiners will serve as an incentive to increased domestic production and also help to maintain stable prices in the East Coast market if decontrol occurs by forcing importers to pass through the maximum amounts of product entitlement benefits in order to remain competitive.

FEA has also provided for an entitlement deduction for residual fuel oil produced for sale into the BOM East Coast District, as opposed to an automatic deduction for production within that District as contemplated by the proposal. FEA believes that the rule adopted in this regard is more in keeping with the overall purpose of this amendment, which is to mitigate market distortions on the East Coast.

The 30% value chosen for entitlement issuances for imports of residual fuel oil is the same utilized for this

purpose in the first three months of the entitlements program. FEA believes that adoption of this level of entitlement value will be sufficient (when taken with the entitlement deduction for domestic production) to make the price of residual fuel oil imports competitive with domestic production. At the same time, this valuation for imports would avoid the undesirable results of a situation where world residual fuel oil prices are depressed and a high product import entitlement value is simultaneously in effect.

Finally, although the scope of FEA's proposed Alternative No. 1 was defined as PAD District I excluding Puerto Rico, in response to comments received, FEA has concluded that residual fuel oil production sold in the Bureau of Mines Petroleum Refining District Appalachian #1 and the U.S. Virgin Islands should also not give rise to any entitlement deduction because these areas do not generally consume imported residual fuel oil, but are almost entirely supplied by domestic refiners. Similarly, the scope of the product entitlement program has also been limited to the BOM East Coast District since this is the only area of the country experiencing substantial market distortions caused by the operation of the entitlements program.

#### Decontrol of Residual Fuel Oil

Concurrent with the issuance of this rule, FEA is also transmitting to the Congress under the procedures specified

in Section 551 of the EPCA the final rule adopted by the agency providing for the exemption of residual fuel oil from FEA's Mandatory Petroleum Allocation and Price Regulations. FEA has also issued in conjunction with this rule its final findings and views concerning such exemption. As provided in the EPCA, the effectiveness of this exemption is conditioned on its not having been disapproved by either House of Congress within the period specified in the EPCA.

FEA believes that the amendments adopted hereby are eminently compatible with the proposed decontrol of residual fuel oil. As shown below in the analysis of the pricing adjustments expected as a result hereof, it is not expected that there will be any significant residual fuel oil price increases resulting from the entitlement deduction for domestic production on the East Coast in the immediate future due to the combined effect of the entitlement value awarded to product imports and the exemption of the first 5,000 B/D of domestic production for each refiner.

Thus, the amendment adopted should have a stabilizing effect on prices once decontrol is effected. The product entitlement benefits granted to importers should help to hold down prices of domestic refiners while the 5,000 B/D exemption should operate to force importers to pass through the maximum amounts of product entitlement benefits in order



to remain competitive. The amendment should also tend to prevent any distortions from arising in the East Coast market for No. 2 heating oil due to the substitution of heating oil for residual fuel oil while prices therein are still subject to price controls.

#### Projected Pricing Effects and Regional Impact

FEA's analysis of the impact on residual fuel oil prices of the adoption of this final rule indicates that the effects of the removal (in December 1975) of the \$2 supplemental import fee have not yet materially influenced these prices.

Under the program before its amendment today, the level of entitlement benefits received by domestic refiners per barrel of imported crude oil would increase from approximately \$1 to approximately \$3 due to the removal of the fee. These benefits will, however, now be reduced by 50%, or approximately \$1.50 per barrel, with respect to crude oil processed into residual fuel oil for sale on the East Coast. Depending on the amounts of imported crude oil processed, the impact of the first 5,000 barrel per day exemption, and the impact of other FEA regulatory changes, the combined effect of the removal of the \$2 import fee and the 50% reduction in entitlement benefits is not expected to result in any material price changes from domestic refiners' current price levels.



Domestic marketers purchasing from foreign refiners will now receive approximately 90 cents in entitlement value per imported barrel (30% of the \$3.00 projected entitlement value of a barrel of crude oil). Under the current price control regulations, the full entitlement benefits like any other reduction in product costs are not required to be passed through if a marketer is selling below its maximum allowable selling price. To the extent that some importers have been selling at or below their cost of product, a full passthrough of benefits would therefore not necessarily occur. However, in order to meet competition from domestic refiners which will enjoy approximately a \$.60 per barrel competitive advantage over the foreign refiners due to the higher level of entitlement benefits they receive, product importers will be under substantial market pressure to pass through the maximum amount of entitlement benefits received whether or not price controls remain in effect.

Adoption of this final rule should, therefore, at a minimum, effectively prevent any price increases in the East Coast residual fuel oil market. The impact of this amendment is also expected to have little or no effect on prices charged for covered products in other regions of the country, even though product entitlements are granted to East Coast importers. This is principally due to the fact that entitlement benefits which would otherwise have been available for

domestic residual fuel oil produced or sold in the East Coast will be reduced by 50%, subject to the first 5,000 B/D exemption. The amount of this reduction is expected to be approximately equal to the amount of the entitlement benefits which will be provided to imports of residual fuel oil. However, it is FEA's belief that had no adjustment been made to the entitlements program as previously in effect, domestic refiners such as the Amerada Hess Corporation would have been in a position to significantly increase their market shares, the result of which would be to increase the entitlement benefits applicable to residual fuel oil sold in the East Coast market. For example, if domestic refiners were to increase their residual fuel oil sales in the East Coast (which would be the likely result if no adjustment to the current program were made) it would have the effect of increasing the prices of other covered products sold in other regions. Consequently, the impact of this modification to the entitlements program is effectively neutral on a regional basis.

## II. AMENDMENTS TO REFLECT THREE TIER PRICE SYSTEM

In the proposal FEA provided for modification of the entitlements program to allocate upper tier domestic crude oil as well as old oil through entitlement transactions, with differing entitlement weights being assigned to possession of supplies of old oil as opposed to those of upper tier crude oil. FEA invited comments as to whether receipts of upper tier crude oil should be given a fixed advantage over receipts of imported crude oil and as to whether the appropriate effective date for these modifications, if adopted, should be February 1 or March 1, 1976.

FEA has concluded that adoption of these proposed amendments is appropriate effective February 1, 1976 to correspond to the effective date of the new crude oil pricing

provisions of the EPCA. FEA has further concluded, on the basis of comments solicited and received on this issue, that a fixed advantage of 21¢ per barrel for all domestic crude oil production over receipts of imported crude oil is also appropriate, in that the import program identifies this amount as being necessary to preserve incentives for refining domestic crude oil. Thus, § 211.67(i) has been amended to provide that the entitlement price will be the exact differential between the weighted average costs to refiners of old oil and of imported crude oil less 21¢.

Under the amendments adopted hereby, each refiner will receive entitlements based on the application of the national domestic crude oil supply ratio to the volume of its crude runs. The domestic oil supply ratio is based on the national supply levels of old oil and of upper tier crude oil. Essentially, the formulae set forth in the proposal for computing entitlement obligations have been adopted, except that the incorporation of a 21¢ per barrel advantage for domestic crude oil production necessitates revising the fraction which is applied to upper tier crude oil receipts to determine the entitlement value for such receipts so that its numerator is equal to the weighted average cost of imported crude oil less the sum of the weighted average cost of upper tier crude oil and 21¢, and its denominator is the entitlement price. Thus, refiners will account for their excess old oil supplies with a full entitlement for each



barrel of excess supplies and for their excess upper tier crude oil supplies with the fractional entitlement value as computed for the particular month. Utilization of a weighted entitlement issuance for upper tier crude oil supplies will allow FEA to continue to administer the program with transactions being limited to one class of entitlements.

### III. MISCELLANEOUS AMENDMENTS

#### 1. Crude Oil Exchanges (§ 211.67(g))

The amendments set forth in the proposal as to the treatment of crude oil exchanges under the entitlements program have been adopted as proposed, except that as to exchanges not involving an exchange balance delivered abroad, crude oil received in an exchange is to be included in a refiner's crude oil receipts at the time it constitutes a crude oil receipt as defined in § 211.62. As to the proposed amendments generally, most firms commenting supported adoption thereof in the form proposed.

Under the clarifying amendments adopted hereby domestic crude oil which is exchanged (in the type of transaction described in § 211.67(g)(1)) for foreign crude oil delivered and processed outside the United States must be reported in one of two ways, depending on whether the domestic firm exchanging away the domestic crude oil is a refiner or a firm other than a refiner. First, a refiner that exchanges away domestic crude oil and receives in exchange foreign crude oil which is delivered and processed outside the



United States is deemed to retain that domestic oil and is required to include the related volumes of domestic crude oil in its crude oil receipts at the time the volumes thereof are so exchanged away. On the other hand, where domestic crude oil is exchanged away by a firm other than a refiner for foreign crude oil which is delivered and processed outside the United States, the provisions of § 211.67(g) do not apply; that is, the volumes of domestic oil subject to the transaction are not deemed to be retained by the firm exchanging away such volumes. Accordingly, the transfer of these domestic volumes within the United States pursuant to an exchange transaction in which other crude oil is also transferred outside the United States is considered to be a sale subject to the certification requirements of § 212.131, and the domestic refiner which ultimately refines that domestic oil must include the volumes thereof as volumes of domestic oil in its crude oil receipts at the appropriate time as provided in § 211.62.

Additional amendments adopted hereby specify that domestic crude oil subject to § 211.67(g) shall be included in a refiner's crude oil receipts generally when the exchange balance in question constitutes a crude oil receipt under § 211.62 to the particular refiner (or refining entity of an integrated company), unless the transaction involves an exchange balance delivered outside the United States, in

which case that domestic crude oil is required to be included in the refiner's receipts at the time it is exchanged away. The amendments adopted also make it clear that the provisions of § 211.67(g) apply to all firms engaged in crude oil exchanges, including producers and brokers acting as resellers, as well as refiners.

2. Corrections for reporting errors (§ 211.67(j))

FEA is adopting as proposed the amendments with respect to reporting of errors and invoice adjustments and as to the special correction mechanism for the first 10 months for which the entitlements program was in effect. However, FEA has not adopted the provision that would permit firms to report as a correction (by the filing of an amended report) adjustments resulting from an FEA audit pertaining to a period more than 60 days prior to the month in which the related revised invoice was received. Comments received on this particular provision pointed out that in most cases refiners would be unable to identify this type of invoice and that generally all adjustments deriving from revised invoices should be treated as current volumetric adjustments to a refiner's crude oil receipts. However, firms which have received invoices effecting substantial adjustments of this type could apply for exception relief if an especially severe impact is experienced under the program.

Under the special correction procedures adopted in § 211.67(j)(2), FEA will recalculate the proper national old oil supply ratios for each of the first ten months for which the program was in effect and arrive at an aggregate net plus or minus dollar amount for each firm for all of these months. This would be based on the inclusion in the proper month of all amounts reported by May 14, 1976 as errors for this period (whether resulting in favorable or unfavorable corrections) and the calculation of a revised national old oil supply ratio for each of these first ten months. Retroactive invoice adjustments for this period will continue to be reflected in the month in which the invoice was received. Once each refiner's net plus or minus dollar position under the program for this period is arrived at, these amounts will be reflected in the entitlement issuances for the period April through July 1976, substantially equal adjustments to be made in each such month.

The definition of "adjusted crude oil receipts" in § 211.62 has also been clarified to provide that retroactive invoice adjustments include corrections of good faith estimates based on prior experience as to the old or upper tier crude oil content of a particular delivery of crude oil. These adjustments are to be reflected on a current basis in a refiner's crude oil receipts. On the other hand, reporting errors requiring the submission of an amended report include

clerical errors and inaccurate estimates as to the domestic crude oil content of a particular delivery where there is no basis in past experience for the estimate. In this regard, FEA has eliminated the provision requiring the filing for exception relief for favorable corrections reported more than two months after the initial report filing for the month in question. Reporting errors require the filing of an amended report and are adjusted by giving effect to differentials in the entitlement price as set forth in § 211.67(j) (1).

These amendments governing the reporting of retroactive invoice adjustments and reporting errors are made effective for refiners' reports to be filed for February 1976 and subsequent months.



Further Proposed Correction Procedures

FEA is soliciting comments with respect to a further proposed modification to account for invoice adjustments and reporting errors. Various refiners have complained of the increasing burdens of amended report filings; of the effect of entitlement price fluctuations on amounts received for invoice adjustments; and of the method of correcting errors to crude oil runs where fluctuations in the national supply ratio dilutes the intended correction.

FEA offers the following proposal as a method for handling, on a prospective basis, invoice adjustments and reporting errors. FEA emphasizes that it is seeking a workable and equitable method of handling these data corrections, but is equally concerned with avoiding greater complexity and administrative burdens on reporting firms.

The proposal would provide for one method of handling of invoice adjustments and reporting errors within 90 days of the original month's report, and another method for handling invoice adjustments and errors reported more than 90 days after the original month's report. FEA believes that most routine invoicing would occur within a 90 day period and that fluctuations in the entitlement price and national supply ratio would be relatively insignificant for this period as compared with the original month, especially in light of recent adjustments to the manner of determination of producers' base production control levels.



Within a 90 day period after the original month's reporting date, FEA proposes that a simple volumetric adjustment to the current month's report would be made as to all revised invoices and reporting errors.

For invoice adjustments or reporting errors prior to the 90 day period, FEA proposes that an entitlement price and domestic oil supply ratio adjustment would be determined by the reporting firm on a worksheet to be filed with FEA using the following procedures. The dollar equivalent (using the original month's entitlement price) of the adjustment or correction would first be determined. For changes to receipts of crude oil, this dollar determination would be based for old oil on the entitlement price, and for upper tier crude oil on the fractional value thereof in effect for the original month. For changes to crude runs, the refiner would calculate the dollar impact for the original month by recalculating its entitlement obligation using the corrected data and the original month's national supply ratio. The dollar difference between the original month's actual entitlement issuance and the corrected issuance for that month would then be determined. These dollar adjustments for each affected month's corrections would be aggregated into a net dollar adjustment and reported to FEA as such. FEA would then convert the net dollar adjustment as reported into an entitlement adjustment based on the current month's entitlement price.

The following brief examples illustrate the procedures described above.

Refiner A has received a revised invoice 120 days after actual receipt of the related crude oil. This invoice indicates that 100 barrels of old oil were erroneously billed as upper tier crude oil. Thus, Refiner A would calculate the additional 100 barrels of old oil at the entitlement price for the original month (assumed to be \$8.00) to constitute an increased obligation of \$800. The decreased upper tier crude oil volume of 100 barrels that bore an assumed .25 fractional entitlement value in the reporting month would constitute a reduced entitlement obligation of \$200 ( $100 \times \$8 \times .25$ ). Thus, the net dollar adjustment is \$600, which FEA would incorporate as an entitlement purchase obligation of that amount in the current month.

Refiner B erroneously included in its crude runs 1,000 barrels of certain feedstocks not qualifying as crude oil. Refiner B, using the program calculation data for the original month, would recalculate its corrected entitlement purchase or sale obligation, incorporating its new data as it is affected by the national supply ratio for the original month. After recalculating its obligation, and determining that the sale obligation would have been 30 entitlements less, Refiner B would multiply that number of entitlements by the entitlement price in the original month. That dollar

adjustment (which reflects an increased current entitlement obligation) would be reflected in its entitlement issuance for the current month.

FEA requests comments on this proposal in accordance with the procedures set forth below in Section IV.

3. Inclusion of Certain Condensates in Crude Runs and Receipts  
(§§ 211.62 and 211.67(d) (3))

FEA is not adopting at this time the proposed amendments to include plant condensate recovered at the inlet side of a gas processing plant in refiners' crude oil runs and receipts. The purpose of this proposal was to conform the coverage of the entitlements program to crude oil as defined in the price regulations. Several comments indicated that it would be inappropriate to include all condensates recovered at the inlet side of a gas processing plant in that only a portion of this material is actually allocated back to the lease and thereafter sold as crude oil. In addition, certain refineries connected with gas processing plants could experience severe difficulties if required to purchase entitlements for these condensates, due to the provisions of the processing agreements under which they operate. Therefore, this particular amendment is not being adopted at this time and FEA is continuing to evaluate how this matter should be most appropriately resolved. In this regard, FEA requests further comments under the procedures set forth below from affected firms as to how this issue should be resolved. However, the clarifying amendment excluding these condensates from the definition of old oil has been adopted and will be effective for all reports under the program until FEA has taken further action on the proposal in this regard.

4. Timing of Program and Reporting Requirements  
(§ 211.66(h) and (i); § 211.67(i))

The amendments set forth in the proposal as to the timing of the program and reporting requirements have been adopted as proposed and were supported by substantially all firms commenting thereon.

The reporting requirements set forth in § 211.66(h) in connection with the monthly refiner's report have been amended to clarify and confirm that each refiner is required to certify to FEA the weighted average costs of old oil, upper tier crude oil and imported crude oil, and of stripper well crude oil if specified by FEA, included in that refiner's crude oil receipts and that such costs shall include any transportation or other costs associated with delivery of those crude oils to the refinery. As to imported crude oil, refiners required to file transfer pricing reports shall utilize the landed cost as reported therein. Section 211.66(h) has been amended to extend the date on or prior to which refiners must submit monthly reports to the fifth day of the second month following the month for which the report is filed. The issue date for entitlement notices under § 211.67(i) would be ten days following this later report filing date. These revised filing dates are being made effective immediately.



#### 5. Export Sales Deduction (§ 211.67(d)(2))

FEA is adopting as proposed the amendments to § 211.67(d)(2) which clarify that the term "refined petroleum product" includes aviation fuels and which include export sales of residual fuel oil as a deduction from a refiner's crude runs. FEA is making the amendment including residual fuel oil as such a deduction effective on a prospective basis, i.e. for the entitlement transactions which will take place in June 1976 for April crude receipts and runs.

FEA received numerous comments on this particular provision, many of which indicated confusion as to exactly what constitutes an export sale for purposes of the deduction. This point has been clarified by a reference in the regulations to § 212.53, which permits export sales to be made at uncontrolled prices.

FEA wishes further to emphasize that the purpose of the export sales deduction is to not grant cost equalization benefits under the entitlements program for sales made into the world market at uncontrolled prices. FEA has been made aware of the marketing difficulties associated with the production of high sulphur residual fuel oil (expecially on the West Coast) and bunker fuel for shipping use; however, FEA has initially determined that the entitlements program is not the appropriate vehicle to subsidize exports of residual fuel oil, or other domestically produced product, to foreign countries.

#### 6. Inventory Averaging (§ 211.67(h))

Section 211.67(h) has been amended to make it clear that refinery shutdowns, whether due to routine required maintenance or to mechanical failures, qualify a refiner for purposes of the provision.

#### IV. WRITTEN COMMENT PROCEDURES

Interested persons are invited to comment on the further proposals set forth in this rulemaking by submitting data, views, or arguments with respect thereto to Executive Communications, Room 3309, Federal Energy Administration, Box FY, Washington, D.C. 20461.

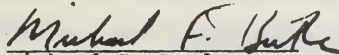
Comments should be identified on the outside of the envelope and on documents submitted to FEA Executive Communications with the designation "Further Comments on Amendments to Entitlements Program". Fifteen copies should be submitted. All comments received by April 30, 1976, and all relevant information, will be considered by the FEA in any final decisions on these matters. Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

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(Emergency Petroleum Allocation Act of 1973, as amended by Pub. L. 94-163; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Parts 211 and 212, Chapter II of Title 10, Code of Federal Regulations, are amended as set forth below, effective immediately, except that the amendment (other than the clarifying amendment) to § 211.67(d)(2) shall be first effective for refiners' crude oil runs to stills in April 1976.

Issued in Washington, D.C., March 29, 1976.

  
Michael F. Butler  
General Counsel

1. Section 211.62 is amended in the final sentence of the definition of "crude oil receipts" by deleting the word "old" and inserting in lieu thereof "domestic crude"; to revise the definitions of "adjusted crude oil receipts", "eligible firm", "entitlement" and "old oil"; to delete the definitions of "adjusted national old oil supply ratio", "eligible products", "new crude petroleum", "old oil supply ratio" and "released crude petroleum"; and to add, in appropriate alphabetical sequence, new definitions of "East Coast market", "eligible product", "national domestic crude oil supply ratio", and "upper tier crude oil" to read as follows:

§ 211.62 Definitions.

"Adjusted crude oil receipts" means the crude oil receipts of a refiner in a particular month the composition of which has been adjusted to reflect any invoice which is received in that month for domestic crude oil (including crude oil sold under § 211.65) delivered to that refiner in any previous month (excluding, however, months prior to November 1974), and which has the effect of increasing or decreasing the volume of old or upper tier crude oil reported by that refiner under § 211.66(h) for such previous month, in cases where such previously reported volume was based on either a prior invoice or a good faith estimate (based on that refiner's past experience as to the old and upper tier crude oil content of domestic crude oil of the same origin)

as to the old and upper tier crude oil content of that crude oil delivery.

\* \* \*

"East Coast market" means the geographical area coextensive with the Bureau of Mines East Coast Petroleum Refining District.

\* \* \*

"Eligible firm" means any firm that imports an eligible product into the East Coast market for sale or use in that market area, that is the importer of record under a license issued pursuant to Part 213 of this chapter and that owns the eligible product at the time of importation thereof pursuant to that license. Importation for the purpose hereof shall be as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

"Eligible product" means residual fuel oil imported into the East Coast market, except that an import of residual fuel oil into United States customs territory from the U.S. Virgin Islands shall not be considered an eligible product.

"Entitlement" means, for a particular month, the right of the refiner owning the entitlement to include one barrel of deemed old oil (as provided in § 211.67(b)), in its adjusted crude oil receipts in that month. The issuance and transfer of entitlements shall be evidenced on records maintained by the FEA.

\* \* \*



"National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)) included in the aggregate adjusted crude oil receipts of all refiners, decreased by a number of barrels of old oil equal to the number of entitlements issuable to small refiners under § 211.67(e), divided by the sum of the total volume of the crude oil runs to stills for all refiners for that month and thirty (30%) percent of the total volume of imports of eligible products by eligible firms for that month. The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

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"Old oil" means old crude oil as defined in § 212.72 of this chapter, except that old oil included in a refiner's adjusted crude oil receipts shall not include condensate recovered at the inlet side of a gas processing plant.

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"Upper tier crude oil" means, effective February 1, 1976, new crude oil as defined in § 212.72 of this chapter

and crude oil produced and sold from a stripper well lease as defined in § 212.74 of this chapter, except that upper tier crude oil included in a refiner's adjusted crude oil receipts shall not include condensate recovered at the inlet side of a gas processing plant.

\* \* \*

2. Section 211.66 is revised in paragraph (h) and is amended to add a new paragraph (j) to read as follows:

§ 211.66 Reporting requirements.

\* \* \*

(h) Monthly report. On or prior to the fifth day of each month, commencing with the month of April 1976, each refiner shall file with the FEA a report certifying the following information as to the second month prior to the month in which the report is filed:

(1) The estimated volume (to the best of the knowledge of the certifying officer) of old oil included in the crude oil receipts of that refiner.

(2) The estimated volume (to the best of the knowledge of the certifying officer) of upper tier crude oil (with separate volumes for stripper well crude oil, if specified by the FEA) included in the crude oil receipts of that refiner.

(3) Any permitted or required adjustments to the estimated volumes of old and upper tier crude oil included in the crude oil receipts of that refiner.

(4) The volume of crude oil runs to stills of that refiner, taking into account, and specifying the amount of, the adjustments provided for in § 211.67(d).

(5) The weighted average costs for that refiner (including transportation costs to the refinery) of old oil, upper tier crude oil (with separate costs for stripper well oil, if specified by the FEA) and imported crude oil included in that refiner's crude oil receipts. For refiners required to file transfer pricing report forms under § 212.84 of this chapter, the weighted average cost of imported crude oil reported under this subparagraph shall be derived from the landed costs set forth in such reports.

(6) Such other information as the FEA may request.

\* \* \*

(j) Monthly report by eligible firms. On or prior to the fifth day of each month, commencing with the month of April 1976, each eligible firm that has imported an eligible product in the second month preceding that month shall file with the FEA a report certifying the following:

(1) The identity, volumes and ports of origin and entry of any eligible products imported by that eligible firm in that preceding month.

(2) That the eligible product was imported for sale in the East Coast market.

(3) Such other information as the FEA may request.

3. Section 211.67 is revised in all paragraphs except paragraphs (e) and (f) to read as follows:

§ 211.67 Allocation of domestic crude oil.

(a) Issuance of entitlements. (1) For each month, commencing with the month of February 1976, each refiner shall be issued a number of entitlements by the FEA equal to the number of barrels of crude oil included in the total volume of that refiner's crude oil runs to stills for that month multiplied by the national domestic crude oil supply ratio for that month, subject to the entitlement adjustment for small refiners set forth in paragraph (e) of this section.

(2) Refiners to which entitlements shall be issued under this section shall include all refiners classified as refiner-buyers or refiner-sellers as of December 1, 1974 for purposes of § 211.65. Any refiner that is not so classified, or the refinery capacity of which is not certified by the FEA for purposes of § 211.65, shall apply to the FEA for certification of its refinery capacity for purposes of qualifying to receive entitlements under this section. With respect to the granting of any such application for certification, the FEA shall consider the factors set forth in § 211.65(b)(v) and (vi).

(3) For each month, commencing with the month of February 1976, each eligible firm that has imported an eligible product in that month shall be issued a number of entitlements equivalent to thirty (30%) percent of the



number of entitlements that would be received by a refiner (without giving effect to the provisions of § 211.67(e)) in that month with respect to inclusion of a number of barrels of crude oil in that refiner's crude oil runs to stills equal to the number of barrels of that eligible product imported by that eligible firm. An eligible product is imported for purposes of this paragraph (a)(3) in the month, as specified on Customs Forms 7501 or 7505, as appropriate, in which importation takes place. For purposes of this paragraph (a)(3), "importation" means that term as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

(b) Required purchase of entitlements by refiners.

(1) For each month, commencing with the month of February 1976, each refiner that has been issued fewer entitlements for that month than the number of barrels of deemed old oil (as calculated under subparagraph (2) of this paragraph) included in its adjusted crude oil receipts shall purchase a number of entitlements effective for that month equal to the difference between the number of barrels of deemed old oil (as so calculated) included in that refiner's adjusted crude oil receipts for that month and the number of entitlements issued to and retained by that refiner. Entitlement purchases required under this paragraph (b) with respect to a particular month shall be effected by the close of the second month following that month.

(2) To calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for



purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart, subparagraph (1) of this paragraph and paragraph (c) of this section, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil for that month, less the sum of 21 cents and such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month.

(c) Refiners and other firms with excess entitlements.

For each month, commencing with the month of February 1976, each refiner that has been issued a greater number of entitlements for that month than the number of barrels of deemed old oil (as calculated under subparagraph (2) of paragraph (b) of this section) included in its adjusted crude oil receipts shall sell such excess entitlements and any eligible firm (other than a refiner) that has been issued entitlements shall sell such entitlements.

(d) Adjustments to volume of crude oil runs to stills.

(1) A refiner's volume of crude oil runs to stills shall (i) include (A) the volume of crude oil processed by another refiner for that refiner pursuant to a processing agreement and (B) the volume of crude oil processed by that refiner for a person other than a refiner pursuant to a processing

agreement, and (ii) exclude the volume of crude oil processed by that refiner for another refiner pursuant to a processing agreement.

(2) The volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in subparagraph (1) of paragraph (a) of this section and the calculations for the national domestic crude oil supply ratio shall be reduced by that refiner's volume of export sales under § 212.53 of Part 212 of this chapter in that month of refined petroleum products (including aviation fuels as defined in § 211.142 of this part, but excluding refined lubricating oils) and residual fuel oil, including sales to a domestic purchaser which certifies the product is for export.

(3) The volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in subparagraph (1) of paragraph (a) of this section and the calculations for the national domestic crude oil supply ratio shall include the total number of barrels of plant condensate and the total number of barrels of synthetic crude oil made from tar sands which are imported from Canada and are utilized in that month as inputs to distillation units by a refiner, measured in accordance with the Bureau of Mines Form 6-1300-M. Neither plant condensate nor synthetic crude oil made from tar sands which are imported

from Canada shall be eligible for inclusion in the volume of a refiner's crude oil runs to stills under this subparagraph (3) unless payment has been made in accordance with Presidential Proclamation No. 3279, as amended, of any import license fees applicable to crude oil as defined for purposes of this section, which is imported for refining.

(4) For purposes of the calculations in subparagraph (1) of paragraph (a) of this section and the calculations for the national domestic crude oil supply ratio (but not for purposes of paragraph (e) of this section), the volume in excess of the first 5,000 barrels per day of a refiner's crude oil runs to stills for a particular month attributable to production of residual fuel oil for sale (whether directly for consumption or for resale) by that refiner in or into the East Coast market shall be reduced by fifty (50%) percent. Any export sales of residual fuel oil giving rise to a deduction under subparagraph (2) above shall not be considered as residual fuel oil production for purposes of this subparagraph (4).

\* \* \* \* \*

(g) Exchanges of crude oil. (1) Subject to the provisions of subparagraph (3) below, in any exchange of

crude oil in which only quality and location differentials are given effect in the calculation of the exchange ratio, or in any matching purchase and sale transaction which has the same effect as such an exchange, no volumes of domestic crude oil shall be deemed to have been transferred. Any volumes of domestic crude oil exchanged away or sold pursuant to any such exchange or matching purchase and sale transaction shall be considered as having been retained by the refiner or other firm that has so exchanged away or sold such volumes, regardless of the volume of crude oil received or purchased by that refiner or other firm in such exchange or transaction.

(2) Subject to the provisions of subparagraph (3) below, volumes of domestic crude oil deemed to be retained by a refiner under the provisions of subparagraph (1) above shall be (i) included in that refiner's crude oil receipts at the time the crude oil acquired pursuant to the related exchange or purchase and sale transaction constitutes a crude oil receipt under § 211.62 of this subpart to that refiner, or (ii) certified as old oil or upper tier crude oil, as the case may be, under the provisions of § 212.131 of Part 212 when the crude oil acquired pursuant to the related exchange or purchase and sale transaction is sold to another firm.

(3) Where a refiner exchanges away or sells volumes of domestic crude oil in an exchange or matching purchase and sale transaction of the type described in subparagraph (1) above and receives in exchange or purchases in the transaction foreign crude oil that is delivered and processed outside the United States, that refiner shall include any domestic crude oil so exchanged away or sold by it in its crude oil receipts as of the date that domestic crude oil is so exchanged away or sold.

(4) The provisions of subparagraph (1) above shall not apply to transactions involving domestic crude oil which is exchanged away by a firm other than a refiner for foreign crude oil that is not processed in a refinery located in the United States. Any firm other than a refiner that has exchanged away or sold domestic crude oil within the United States pursuant to an exchange transaction in which other crude oil is also transferred outside the United States shall comply with the certification requirements of § 212.131 of Part 212 as to any volumes of old oil or upper tier crude oil, as the case may be, so exchanged away or sold. Any domestic crude oil delivered to a refiner in the United States pursuant to a transaction of the type described in this subparagraph (4) shall be included in the crude oil receipts of the refiner that receives, directly or indirectly through further sales or exchanges, the volumes of domestic



crude oil that are the subject of the transaction, as provided in § 211.62 of this subpart.

(5) For purposes of this paragraph (g), "refiner" means any firm that owns, operates or controls the operations of one or more refineries, and includes any entity that is a part of or affiliated with, or that controls or is controlled by (whether directly or indirectly), a refiner.

(h) Averaging of crude oil receipts. Upon application by a refiner in accordance with the procedures established under Subpart G of Part 205 of this chapter within thirty (30) days following the close of a month, the FEA may adjust the crude oil receipts of that refiner for that month to permit the portion of such crude oil receipts specified by the FEA to be included in the crude oil receipts of that refiner for one or more subsequent months, if the volume of crude oil receipts in that month is significantly disproportionate to the volume of that refiner's crude oil runs to stills for that month due to a shutdown (by reason of either a mechanical failure or normal maintenance procedures) resulting in a fifty (50%) percent or greater portion of that refiner's refinery capacity not having been operable for the duration of that month.

(i) Issuance and transfer of entitlements. (1) The FEA shall issue entitlements for each month (effective for the month of February 1976 and subsequent months) pursuant

to a notice issued on the fifteenth day of the second month following that month.

(2) Each notice published by the FEA evidencing the issuance of entitlements under this section shall specify as to a particular month the national domestic crude oil supply ratio, the name of each refiner and other eligible firm to which entitlements have been issued, the number of barrels of deemed old oil included in each refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, the number of entitlements required to be purchased or sold by each such refiner or other firm, and the price at which entitlements shall be purchased and sold.

(3) No transfer of an entitlement shall be effective if made to any firm that is not purchasing such entitlement to fulfill such firm's obligations under this section.

(4) The price at which entitlements shall be sold and purchased shall be fixed by the FEA for each month and shall be the exact differential between the weighted average cost per barrel to refiners of old oil and of imported crude oil, less 21 cents, such costs to be equivalent to the delivered costs to the refinery.

(j) Reporting errors. (1) Refiners and eligible firms shall correct any errors contained in reports filed pursuant

to § 211.66 by filing an amended report for the particular month. Based on any reporting errors so corrected, the FEA in its discretion may adjust entitlement issuances to the refiner or eligible firm in one or more months subsequent to the month in which the amended report is filed with the FEA, by issuing fewer entitlements than the number otherwise issuable, by requiring the refiner or eligible firm to purchase entitlements in order to correct for excess entitlements issued in a prior month or by issuing entitlements over and above the number otherwise issuable to compensate for too few entitlements having been issued in such prior month. All entitlement issuances or purchase requirements under this subparagraph shall give effect to any differential between the entitlement price for the month in which any correction is reflected as compared with the entitlement price for the month as to which the reporting error was made (except with respect to corrections to volumes of crude oil runs to stills where a corresponding adjustment to crude oil receipts was made as contemplated by the term "adjusted crude oil receipts" in § 211.62) and such other factors as the FEA deems appropriate.

(2) Notwithstanding the provisions of subparagraph (1) of this paragraph, corrections of reporting errors for the months November 1974 through August 1975 shall be made as follows. FEA shall recalculate for those months the purchase

and sale obligations (giving effect to any applicable relief under decisions and orders issued by FEA's Office of Exceptions and Appeals and to the provisions of Special Rule No. 3 for Subpart C) of all refiners and eligible firms based on inclusion in each month of each refiner's and eligible firm's corrected volume (as reported to the FEA) of crude oil runs to stills, volume of old oil included in its crude oil receipts (other than adjustments effected as contemplated by the term "adjusted crude oil receipts" in § 211.62) and eligible product imports. No entitlement price adjustment as contemplated by subparagraph (1) of this paragraph shall be made in the calculations under this subparagraph (2). FEA shall then aggregate for each refiner and eligible firm its net purchase or sale amount (in dollars) for these months (giving effect to the published purchase and sale obligations for these months) and apply these amounts in substantially equal portions (translated into current entitlement values) to that refiner's or eligible firm's entitlement purchase or sale obligations for the months of April through July 1976.

(3) For purposes of this paragraph, errors required to be corrected by the filing of amended reports include (i) clerical errors, and (ii) inaccurate estimates as to the domestic crude oil pricing composition of a particular volume of crude oil where the refiner had no basis, in prior experience or otherwise, on which to make that estimate.



(k) Failure to consummate transactions. The FEA may direct refiners or eligible firms that have not purchased the required number of entitlements under this section for a particular month to purchase such required number of entitlements at a price specified by the FEA from any refiner or eligible firm that has entitlements for such month available for sale. The FEA may direct refiners or eligible firms that have entitlements available for sale to sell such entitlements at a price specified by the FEA to refiners or eligible firms that have not purchased their required number of entitlements under this section.

(l) Certification of old and upper tier crude oil by non-refiners. Within twenty-eight (28) days following each month, commencing with the month of February 1976, each firm other than a refiner that has delivered crude oil to a refiner for processing for the account of such firm pursuant to a processing agreement in that month shall certify to that refiner the volumes of old oil and upper tier crude oil contained in the crude oil so delivered to that refiner.

(m) Adjustments to Crude Oil and Product Costs. (1) Refiners. (i) Entitlements purchased. (A) The cost of entitlements purchased in a particular month pursuant to this section by refiners, which shall be calculated exclusive of any reduction in such costs in a particular month because of entitlements issued for the importation of eligible



products, and exclusive of the cost of entitlements purchased in a particular month pursuant to adjustments to a refiner's crude oil runs to stills under paragraph (d)(4) of this section, shall be added to the cost of crude oil purchased or landed in that month (which is the period "t" (the month of measurement), for purposes of calculating the increased cost to be applied to product prices in the following month under the " $A^t$ " factor of the general formulae of § 212.83(c)(2) of this chapter); provided, that, to the extent that the obligation of a refiner to purchase entitlements is reduced by volumes of crude oil processed by a refiner for a firm other than that refiner pursuant to a processing agreement, and that the monetary value of that reduced purchase obligation is used to reduce the processing fee otherwise payable by that firm under the processing agreement, or is otherwise passed on to that firm, such monetary value may also be added by that refiner to its cost of crude oil purchased or landed in that month, but shall be subtracted from the cost of crude oil purchased or landed in that month by the firm to which the monetary value of the reduced purchase obligation is passed on pursuant to this paragraph.

(B) The reduction in the cost of entitlements purchased in a particular month because of entitlements issued for the importation of eligible products shall be subtracted from the total cost of the product concerned, purchased or landed

in that month (which is the period "t" (the month of measurement), for purposes of calculating the increased costs to be applied to prices of that product under the " $B_1t$ " factor of the appropriate formula for that product of § 212.83(c) of this chapter).

(C) The cost of entitlements purchased in a particular month pursuant to the adjustments to a refiner's crude oil runs to stills under paragraph (d)(4) of this section shall be a cost of crude oil purchased or landed in that month which shall not be applied to product prices pursuant to the " $A^t$ " factor of the general formulae of § 212.83(c)(2) of this chapter, but which shall instead be applied only to prices for residual fuel oil.

(ii) Entitlements sold. (A) The sales revenues from entitlements sold in a particular month pursuant to this section by refiners, which shall be calculated exclusive of any reduction in such sales revenues in a particular month pursuant to adjustments to a refiner's crude oil runs to stills under paragraph (d)(4) of this section, and exclusive of any sales revenues from the sale of entitlements issued for the importation of eligible products, shall be subtracted from the cost of crude oil purchased or landed in that month (which is the period "t" (the month of measurement), for purposes of calculating the increased costs to be applied to all product prices in the following month under the " $A^t$ "

factor of the general formulae of § 212.83(c)(2) of this chapter); provided, that, to the extent that the sales revenues from entitlements which are issued for volumes of crude oil processed by a refiner for a firm other than that refiner pursuant to a processing agreement are used to reduce the processing fee otherwise payable by that firm under the processing agreement, or are otherwise passed on to that firm, such sales revenues shall not be subtracted by that refiner from its cost of crude oil purchased or landed in that month, but shall be subtracted from the cost of crude oil purchased or landed in that month by the firm to which the entitlement sales revenues are passed on pursuant to this paragraph.

(B) The sales revenues from entitlements issued for the importation of eligible products which are sold in a particular month shall be subtracted from the total cost of the product concerned, purchased or landed in that month (which is the period "t" (the month of measurement), for purposes of calculating the increased costs to be applied to prices of that product under the " $B_{1t}$ " factor of the appropriate formula for that product of § 212.83(c)(2) of this chapter).

(C) The reduction in sales revenues from entitlements sold in a particular month pursuant to the adjustments to a refiner's crude oil runs to stills under paragraph (d)(4) of this section shall be a cost of crude oil purchased or landed in that month which shall not be applied to product prices pursuant to the "A<sup>t</sup>" factor of the general formulae of § 212.83(c)(2) of this chapter, but shall instead be applied only to prices for residual fuel oil.

(2) Resellers and Retailers. The sales revenues from entitlements sold pursuant to this section by resellers or retailers shall be subtracted from the cost of the product in inventory for which the entitlements were issued, so as to reduce the weighted average unit cost of that product in inventory computed pursuant to § 212.92 of this chapter.

(3) Sales of Eligible Products to Eligible Firms. The total amount of any reductions in the cost of eligible products to the seller because of entitlements issued for the importation of such products, which are required by paragraphs (m)(1) and (m)(2) of this section, shall be applied exclusively to the determination of maximum lawful prices charged in sales in which the purchaser does not receive entitlements for the importation of an eligible product. Separate price calculations shall be made for sales of eligible products in which the purchaser receives entitlements for the importation of eligible products, which

shall comply in all respects with the regulations of Subparts E or F of Part 212 of this chapter, except that the amount of increased product cost used to compute such prices shall not be reduced because of entitlements issued for the importation of eligible products.

(4) Timing. The date of purchase or sale of entitlements for purposes of determining the date on which a cost or a cost reduction is incurred under § 212.83(c) or § 212.93 of this chapter shall be the date on which the transaction is reported to have taken place on the monthly transaction report filed with the FEA under paragraph (i) of § 211.66.

4. Section 212.83 is amended in paragraph (e)(8) to read as follows:

§ 212.83 Allocation of refiner's increased costs.

\* \* \*

(e) Carryover of costs.

\* \* \*

(8) Equal application among classes of purchaser.

With respect to each covered product other than crude oil, when a firm calculates the amount of increased product cost not recouped that may be added to May 15, 1973 selling prices to compute base prices in a subsequent month, it shall calculate its revenues as though the greatest amount of increased product costs actually added to any May 15,



1973 selling price of that covered product and included in the price charged to any class of purchaser, had been added, in the same amount, to the May 15, 1973 selling prices of such product and included in the price charged to each class of purchaser; except that, where an equal amount of increased product cost is not included in the price charged to a purchaser because of a price term of a written contract covering the sale of such product that was entered into on or before September 1, 1974, that portion of the increased product costs not included in the price charged to such a purchaser need not be included in the calculation of revenues, and except to the extent that § 211.67(m) of this chapter specifically requires certain costs and revenues resulting from entitlements transactions to be applied exclusively to determine maximum lawful prices in sales in which purchasers do not receive entitlements for the importation of an eligible product.

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5. Section 211.51 is amended in the definition of "importer" to read as follows:

§ 211.51 General definitions.

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"Importer" means any firm (excluding the Department of Defense) that owns at the first place of storage any allocated product or crude oil brought into the United States, but not

necessarily the importer of record under a license issued pursuant to Part 213 of this chapter.

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## TITLE 10 - ENERGY

## CHAPTER II - FEDERAL ENERGY ADMINISTRATION

PART 210 - GENERAL ALLOCATION AND PRICE RULES  
PART 211 - MANDATORY PETROLEUM ALLOCATION REGULATIONS  
PART 212 - MANDATORY PETROLEUM PRICE REGULATIONS  
PART 215 - LOW SULFUR PETROLEUM PRODUCTS REGULATION

Exemption of Residual Fuel Oil from the  
Mandatory Petroleum Allocation and Price Regulations

Introduction

On February 12, 1976, the Federal Energy Administration issued a notice of proposed rulemaking and public hearing (41 FR 7122, February 17, 1976) to amend 10 CFR Parts 210, 211 and 212 to exempt residual fuel oil from the Mandatory Petroleum Price and Allocation Regulations. The proposal was based on tentative conclusions with respect to residual fuel oil set forth in a document dated February 11, 1976, entitled "Preliminary Findings and Views Concerning the Exemption of Residual Fuel Oil from the Mandatory Petroleum Allocation and Price Regulations" ("Preliminary Findings"). Written comments on the exemption proposal and on the Preliminary Findings were invited through March 5, 1976, and the public hearing was held March 9, 1976.

FEA also issued a separate notice of proposed rulemaking on February 12, 1976 to adjust the entitlements program in order to correct certain distortions in the East Coast residual fuel oil market. Since the proposed exemption assumed that those distortions would be eliminated before the proposed exemption would become effective, interested

persons were advised to consider the closely-related entitlements proceeding in connection with this proceeding.

Concurrently with the issuance of this final rule, FEA has issued amendments to the entitlements program and to the refiners' cost allocation regulations to correct the East Coast market anomalies. The amendments are expected to enhance competition in the East Coast market by reducing the amount of the disadvantage suffered by some non-refiner importers and to prevent any marketer from obtaining an undue economic advantage as a result of decontrol.

Sixty-one written and oral comments were received in response to the notice of proposed exemption. Those offering comments included major integrated refining companies, small and independent refining companies, marketers, ultimate consumers, state governments, a foreign government and trade associations.

Almost all of the parties commenting agreed with FEA that residual fuel oil should be exempted from FEA's allocation and price regulations. This support was based generally upon agreement with FEA's conclusions as to supply and demand projections, competition, and other findings and views set forth in the Preliminary Findings. Parties opposing the exemption of residual fuel oil generally based their opposition on the belief that the current surplus supply situation might end sometime in the future, that spot shortages



might occur, and that if such shortages were to occur, consumers of residual fuel oil would be without the protection of price controls and might be subject to inequitable prices.

FEA has carefully considered the comments of all persons who participated in the rulemaking. Following its consideration, FEA has concluded that its initial view that residual fuel oil should be exempted from regulations is correct.

No information or data were presented in this proceeding which significantly alter FEA's preliminary findings and views. FEA does not anticipate that supply shortages will occur in the future as predicted by some comments and in any event FEA has standby authority under section 12(f) of the Emergency Petroleum Allocation Act of 1973 (EPAA) to reimpose allocation and price controls (on a temporary or permanent basis) if necessary to attain the objectives set forth in section 4(b)(1) of the EPAA. Therefore, FEA hereby adopts the proposed amendments exempting residual fuel oil from the Mandatory Petroleum Allocation and Price Regulations. This exemption will be effective June 1, 1976 unless disapproved by either House of Congress under section 551 of the Energy Policy and Conservation Act (EPCA).

#### Findings and Views

In addition to this amendment to exempt residual fuel oil from the Mandatory Petroleum Allocation and Price

Regulations, FEA has prepared its findings and views supporting the amendment as required by section 12 of the EPAA based upon its consideration of the comments of those persons who participated in the rulemaking and other information available to FEA. These findings and views are set forth in a document dated March 29, 1976 and entitled "Findings and Views Concerning the Exemption of Residual Fuel Oil from the Mandatory Petroleum Allocation and Price Regulations" ("Findings and Views"). These findings and views may be summarized as follows:

(1) Residual fuel oil is not in short supply.

-- Sufficient refining capacity exists, both in the U.S. and abroad, to satisfy adequately projected U.S. demand.

-- The East Coast has traditionally relied on Caribbean imports to supply 80-90% of its residual fuel oil demand. However, since 1973, an increasing percentage of its demand has been satisfied by domestic refining with a shift towards the U.S. Gulf Coast for supplies.

(2) Exemption of residual fuel oil from the Mandatory Petroleum Allocation and Price Regulations will not have an adverse impact on the supply of any other oil or refined product subject to the EPAA.

(3) Competition and market forces are adequate to protect consumers, following an exemption of residual fuel oil from regulation. In fact a greater degree of competition would be expected after exemption than exists under current regulations.

- No price increases are anticipated to result directly from decontrol.
- The residual fuel oil market share of large, integrated refiners has been decreasing since 1972, while that of the large independent and small refiners has been increasing. However, continued controls could lead to a deterioration of competition, resulting in reduced economic efficiency and higher prices.
- Market anomalies on the East Coast detrimental to some marketers have existed due to the previous operation of the entitlements program. Amendments to the entitlements program and to the refiners' cost allocation regulations, however, have been issued concurrently with this exemption to correct these anomalies. The amendments are expected to enhance competition in the East Coast market

by reducing the amount of the disadvantage suffered by some marketers and to prevent any marketers from obtaining an undue economic advantage as a result of decontrol.

-- The exemption itself will have a positive effect on competition, in particular enhancing the competitive viability of small and independent refiners and marketers.

-- The exemption would permit purchasers (including consumers) to seek the lowest cost supplier by freely using competitive bids without regard to fixed supplier/purchaser relationships, thereby exerting downward pressure on existing market prices and providing incentives to enhance marketing services.

-- The availability of consumer goods and services will not be adversely affected by exempting residual fuel oil from regulation.

(4) Exemption of residual fuel oil from regulation will not result in inequitable prices for any class of residual fuel oil or other product user.

- Current market prices for domestic and foreign refined residual fuel oil are relatively equal.
- Aggregate prices for residual fuel oil will remain unchanged by the exemption itself. Prices can, however, be expected to rise over time as the result of increased domestic and foreign crude costs.
- Analysis of the historical price relationship between crude oil and residual fuel oil suggests that the residual fuel oil market has returned to its historical pattern following the disruptive effects of the Arab embargo.
- A review of existing "banked" costs indicates that some non-refiner importers may have experienced serious difficulty passing through their increased product costs. Although banked costs for residual fuel oil at the refiner level are not specifically segregated, costs have been applied to this product in such amounts as to result in an equilibrium between domestic and foreign prices.



The Findings and Views also state FEA's views concerning the potential economic impacts of exempting residual fuel oil from the Mandatory Petroleum Allocation and Price Regulations. It is not anticipated that there will be any adverse state or regional impacts resulting from the proposed exemption. In fact, governmental units which use large quantities of residual fuel oil will find that exemption will permit them to use competitive bids more easily. In addition, FEA anticipates no adverse economic impacts on the availability of consumer goods or services, the gross national product, small business or the supply and availability of energy resources as fuel or feedstock for industry. FEA expects that the exemption will have a positive effect on competition. The exemption is likewise expected not to cause an adverse effect on employment or consumer prices. FEA's analysis of the effects of the exemption on the rate of unemployment in the U.S., on the Consumer Price Index and on the implicit price deflator for the gross national product are set forth in detail in the Findings and Views.

In addition to these findings and views, FEA is required by section 12 of the EPAA to set forth its conclusions as to whether the exemption is consistent with the objectives set forth in section 4(b)(1) of the EPAA. These objectives are:

(A) protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units), and the national defense;

(B) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(C) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(D) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

(E) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of exploration for, and production or extraction of--

(i) fuels, and

(ii) minerals essential to the requirements of the United States, and for required transportation related thereto;

(H) economic efficiency; and

(I) minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

FEA's conclusions, based on all information available to FEA, are that since an adequate supply is anticipated, the allocation and pricing of residual fuel oil are not necessary to protect the public health, safety and welfare (section 4(b)(1)(A)); the maintenance of agricultural operations (section 4(b)(1)(B)); or the maintenance of exploration for and production or extraction of fuels (section 4(b)(1)(F)). Adequate supply and the positive effects of increased competition should insure that the exemption is consistent with the preservation of an economically sound petroleum industry (section 4(b)(1)(C)); the equitable distribution of crude oil, residual fuel oil and refined petroleum products (section 4(b)(1)(E)); economic efficiency (section 4(b)(1)(G)); and minimization of economic distortions, inflexibility, and interference with market mechanisms (section 4(b)(1)(H)). The exemption should have no adverse effect on the allocation of suitable crude oil to U.S. refineries (section 4(b)(1)(D)).

#### Definition of Residual Fuel Oil

Under the proposal, "residual fuel oil" included the fuel commonly known as No. 4, No. 5 and No. 6 fuel, Bunker C, No. 4-D diesel fuel, Navy Special Fuel Oil and all other

fuel oils which have a fifty percent boiling point over 700° F in the ASTM D-86 standard distillation test. The Mandatory Petroleum Allocation Regulations include within the definition of residual fuel oil crude oil, when burned directly as a fuel. FEA, however, did not propose that crude oil be exempted from either Subpart C of Part 211 or the Mandatory Petroleum Price Regulations. Consequently, as part of the proposal residual fuel oil was redefined in § 211.51 to exclude crude oil when burned directly as a fuel.

Because no comments raised valid objections to the proposed scope of the exemption, FEA has adopted the definition as proposed. Certain conforming amendments are also made to the Part 212 price regulations, to reflect the exemption of residual fuel oil. The term "residual fuel oil" has been re-defined, to include No. 4-D diesel fuel and No. 4 heating oil, and the term "covered product" has, in turn, been re-defined to exclude residual fuel oil. Also, references to permissible levels of price increases for residual fuel oil to reflect increased marketing costs (for refiners) and increased non-product costs (for resellers and retailers) have been deleted from §§212.87 and 212.93.

#### Allocation of Increased Crude Oil Costs to Residual Fuel Oil

The notice of proposed rulemaking also noted that further amendments to the price regulations applicable to refiners, beyond a simple exemption, might be necessary,

depending in part on the precise nature of changes in the entitlements program with respect to residual fuel oil. Pursuant to the refiners' cost allocation formulae of § 212.83(c), the portion of the total increased cost of crude oil of each refiner which is attributable on a proportionate volumetric basis to the quantity of exempt products produced from crude oil is excluded from the amount of increased costs of crude oil which may be passed through in prices charged for covered (i.e., non-exempt) products.

The notice specified that it might be appropriate to modify this general approach to the allocation of increased crude oil costs between exempt and covered products with respect to residual fuel oil, particularly if the entitlements program were modified so that less than a full entitlement would be earned for crude oil runs attributable to production of residual fuel oil for the East Coast market, so as to increase the effective cost to each refiner of crude oil attributable to such residual fuel oil production. The notice stated that in that event, it might be appropriate to exclude a proportionate share of increased crude oil costs plus the total amount of the reduction in entitlement benefits (or increased entitlement obligations) which result from the residual fuel oil modifications to the entitlements program to insure that the impact of the cost adjustments with respect to crude oil attributable to residual fuel oil production would be limited to residual fuel oil, as intended.



In addition, FEA solicited comments on whether the increased costs of crude oil attributable to residual fuel oil (and therefore not eligible for pass through in prices charged for covered products if residual fuel oil is made an exempt product) should be determined on the historical basis of actual cost allocation under price controls rather than on a volumetric basis, or whether it would be more appropriate to accomplish the adjustment based on the percentage of the refiner's actual residual fuel oil production thus eliminating the necessity of including purchases of refined product within the calculation.

With respect to the issue as to how to treat increased costs of crude oil with respect to residual fuel oil, the written comments and oral testimony generally supported the concept as set forth in the notice of proposed rulemaking of treating residual fuel oil as other exempt products under § 212.83. FEA has concluded that this approach is the most appropriate.

Pursuant to § 211.67(m), as amended, the costs or revenues resulting from entitlements transactions other than for residual fuel oil sold in the East Coast market, or any entitlements issued for the importation of residual fuel oil, into the East Coast market, constitute an increase or reduction in the total cost of crude oil for each refiner.

Pursuant to § 212.83(c), as recently amended, refiners may allocate the increased total cost of crude oil between products subject to price controls and exempt products on the basis of the volumes of those product categories refined by each refiner. Based on the comments received, this approach is preferable because it appears to be the most equitable and easily administered. It is also consistent with the past treatment of exempt products under FEA price regulations.

Any adjustments to entitlement benefits because of residual fuel oil sold in the East Coast market, or because of imports of residual fuel oil may, pursuant to § 211.67(m), be reflected only in prices charged for residual fuel oil and may not be reflected in prices charged for any other products.

The notice of proposed rulemaking noted that with respect to banked costs, to the extent that any refiner may have recovered less than a proportionate share of its increased costs of crude oil attributable to residual fuel oil on a volumetric basis, it may be appropriate to reduce that refiner's unrecovered (or "banked") costs for general refinery products by that amount. This would insure that amounts of "banked" costs attributable to the production and sale of residual fuel oil are not passed through on other covered products.

Parties commenting on this issue generally opposed reducing refiners' banked costs. Because refiners have been allowed to allocate a disproportionate amount of increased costs to residual fuel oil and it is very difficult to determine the extent to which this has or has not occurred, FEA has concluded that it would be unduly complex to determine in an equitable manner how much reduction should be made in each refiner's banked costs. Moreover, if controls are removed from other products in the general refined products category soon after the exemption of residual fuel oil, such a reduction even if now justified would no longer serve any purpose. Therefore, FEA has decided not to adopt any reduction in banked costs in connection with this exemption.

#### Amendments to Part 215

The rule as adopted by FEA also exempts residual fuel oil from the operation of Part 215 of FEA's regulations, which prohibits sale or receipt of petroleum products for use for burning under certain power generators that were not so using a petroleum product on December 7, 1973, and which imposes certain reporting requirements when covered power generators which burn petroleum products switch to petroleum products of a lower specified sulfur content, by weight, than that used during November of 1973. The exemption of residual fuel oil from the definition of petroleum products covered by Part 215 is necessary to make that part technically

consistent with exemption of residual fuel oil from the Mandatory Petroleum Allocation and Price Regulations, and takes into account the views expressed in the two comments on Part 215 that were received by FEA in response to the Notice of Public Hearing and Opportunity for Public Comment on Reevaluation of the Mandatory Petroleum Allocation and Price Regulations, (41 FR 4727, January 30, 1976).

#### Effective Date and Standby Authority

Comments and testimony received with respect to the time necessary between the promulgation of the exemption amendment and its implementation generally supported FEA's tentative conclusion that 30 to 45 days would be sufficient for suppliers and purchasers to establish alternative supply arrangements. In order to provide the time required for Congressional review under section 551 of the EPCA and the necessary lead time, FEA has determined that this amendment should be effective June 1, 1976.

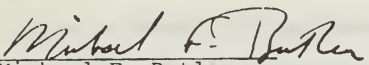
Section 12(f) of the EPAA provides that following the exemption of any product from regulation, FEA shall have the authority at anytime to reimpose price and allocation controls if necessary to attain the objectives of the EPAA. For this reason, FEA is adopting amendments which stay the effectiveness of Subpart I of Part 211 and of the general price

regulations as they would otherwise apply to residual fuel oil, without deleting those regulations from the Code of Federal Regulations. They are in effect converted to standby status, so that in the event of shortages or other occurrences which might require reimposition of controls, they may be quickly put into effect.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended by Public L. 94-163; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790 (39 FR 23185)).

In consideration of the foregoing, Parts 210, 211, 212 and 215 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective June 1, 1976, unless this amendment is disapproved by either House of Congress pursuant to the review procedures set forth in section 551 of the EPCA.

Issued in Washington, D.C., March 28, 1976.

  
Michael F. Butler  
General Counsel  
Federal Energy Administration



1. Section 210.35 is added to Part 210 as follows:

§ 210.35 Exempted products.

(a) Residual fuel oil is exempt from the provisions of Part 211 and Part 212 of this chapter.

2. Section 211.1 is amended in paragraph (b) by revoking subparagraph (2), redesignating subparagraph (4) as subparagraph (2), and by adding a new subparagraph (4) to read as follows:

§ 211.1 Scope.

\* \* \* \* \*

(b) Exclusions.

\* \* \*

(4) Notwithstanding the provisions of Subpart I of this part, residual fuel oil is excluded from this part.

3. Section 211.51 is amended in the definition of "Residual fuel oil" by deleting the phrase "(d) crude oil when burned directly as a fuel;".

4. Section 212.31 is revised in the definitions of "covered products," "middle distillates," and "Residual fuel oil" to read as follows:

§212.31 Definitions.

\* \* \*

"Covered products" means aviation fuels, benzene, butane, crude oil, gas oil, gasoline, greases, hexane,

kerosene, lubricant base oil stocks, lubricants, naphthas, natural gas liquids, natural gasoline, No. 1 heating oil and No. 1-D diesel fuel, No. 2 heating oil and No. 2-D diesel fuel, propane, special naphthas (solvents), toluene, unfinished oils, xylene, and other finished products. A blend of two or more particular covered products is considered to be that particular covered product constituting the major proportion of the blend.

\* \* \*

"Middle distillates" means Nos. 1 and 2 heating oils, Nos. 1-D and 2-D diesel fuels, kerosene and aviation fuels.

\* \* \*

"Residual fuel oil" means No. 4 fuel oil, No. 4-D diesel fuel, those fuel oils commonly known as ASTM Grades No. 5 and No. 6 fuel oils, heavy diesel, Navy Special, Bunker C and all other fuel oils which have a fifty percent boiling point over 700° F. in the ASTM D86 standard distillation test.

\* \* \* \* \*

5. Section 212.83 is revised in paragraph (c)(1)(ii)(B) to read as follows:

§212.83 Allocation of refiner's increased costs.

\* \* \*

(c) Allocation of increased product cost - (1)General rule.

\* \* \*

(ii) General refinery products.

\* \* \*

(B) For purposes of this section, each of the following products or product categories shall constitute "a particular general refinery product": aviation gasoline, benzene, butane, gas oil, greases, hexane, kerosene, lubricant base oil stocks, lubricants, naphthas, natural gas liquids, natural gasoline, No. 1 heating oil and No. 1-D diesel fuel, propane, special naphthas (solvents), toluene, unfinished oils, xylene, and other finished products. A blend of two or more particular covered products is considered to be that particular covered product constituting the major proportion of the blend.

\* \* \*

6. Section 212.87 is amended by deleting paragraph (c) (4) (v) and by redesignating paragraph (c) (4) (vi) as paragraph (c) (4) (v).

7. Section 215.2 is amended in the definition of "Petroleum product" to read as follows:

§ 215.2 Definitions.

\* \* \*

"Petroleum product" means crude oil, refined petroleum products and petroleum coke as defined in § 211.51 of Part 211 of this chapter.

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